Rozilawati bt Hj Basir v Nationwide Express Holdings Bhd & Ors

HIGH COURT (KUALA LUMPUR) — WRIT NO WA-22NCC-361–08 OF 2018
NANTHA BALAN J
29 NOVEMBER 2018

Companies and Corporations — Meetings — Notice — Particulars in notice of meeting — Whether specific particulars of matters that to be discussed and deliberated upon needed to be stated in notice or agenda — Whether notice and/or agenda invalid, null and/or void — Whether insufficiency or absence of content or particulars in notice or agenda vitiated meeting of board of directors — Whether resolution passed in board meeting invalid, null and/or void — Whether plaintiff could approach civil court for order of reinstatement

This was an application by the defendants (encl 10) to strike out the writ and statement of claim dated 17 August 2018. The plaintiff, a former director and a former managing director ('MD') of the first defendant, a public company listed under the main market of BURSA Malaysia, was seeking declaratory and injunctive reliefs arising out of her complaint with regard to the validity of the board of directors ('BOD') meeting of the first defendant held on 30 May 2018, wherein it was decided that the plaintiff's contract of employment as the MD, be terminated forthwith. The gist of the plaintiff's complaint was that the notice calling for the meeting of directors and the agenda which was issued thereafter did not state or indicate that the plaintiff's contract of employment, or her performance, or conduct as MD, was to be discussed at the meeting and that a decision would be taken to terminate her contract of employment. As such, it was contended that the failure to specify these matters in the notice or in the agenda vitiated the meeting of the BOD and the decisions taken thereat. By way of a notice dated 27 April 2018 ('the notice'), the plaintiff and the directors of the first defendant ie second to fifth defendants were informed of a BOD meeting which was to be held on 30 May 2018 ('the board meeting'). Thereafter, an agenda dated 21 May 2018 for the board meeting ('the agenda') was circulated to, inter alia, the plaintiff. During the board meeting on 30 May 2018, it was announced by the chairperson that the plaintiff's contract of employment as the MD was to be terminated forthwith. The plaintiff was also seeking reliefs in respect of one Indraa Izwaan Mohd Yusof ('Indraa') who was the Chief Operating Officer ('COO') of the first defendant at the material time. It was decided at the board meeting that Indraa was also to be dismissed. However, Indraa was not a party to the suit. The reliefs sought by the plaintiff, as per the writ and statement of claim, inter alia, were: (a) a declaration that the board meeting held on 30 May 2018 was wrongfully convened, ineffective,

invalid, null and/or void; and (b) a declaration that the resolution passed in the board meeting in relation to the plaintiff's position as the MD of the first defendant as well as Indraa's position as COO was wrongful, ineffective, invalid, null and/or void.

Held, granting the order in terms of encl 10; striking out and dismissing the writ/statement of claim:

(1) Article 86 was silent on the need for any specific details to be mentioned in the notice or agenda for the board meeting which was held on 30 May 2018 (see para 28).

(2) As a matter of company law or the law of meetings, there was clearly no such requirement for a notice of directors meeting must mandatorily contain the specific particulars of the matters that were to be discussed and deliberated upon. As a matter of prudent business practice, corporate transparency and quite possibly as a matter of fairness to the targeted individual, the notice or the agenda ought to give the recipients/attendees of the board meeting, a 'heads-up' of what to expect at the meeting so that the relevant party or parties could equip or apprise themselves with sufficient information so as to address the issues that are likely to or will arise at the board meeting. But these ideal or best practices or equitable considerations did not in any way derogate from or denude the salutary principle that a notice of BOD meeting or agenda which stated precious little about the matters that were to be discussed was not ipso facto invalid or null and void (see paras 58–59).

(3) Hence, the Notice and Agenda were valid and it followed consequently that the board meeting and the resolutions passed thereat were valid and proper from the perspective of company law and the law of meetings. The reliefs which were sought on behalf of Indraa were legally untenable and were a manifestation of an abuse of process (see para 63).

(4) The plaintiff could not approach the civil court for an order of reinstatement as that remedy was solely within the jurisdiction of the Industrial Court per s 20 of the Industrial Relations Act 1967 (see para 64).

[Bahasa Malaysia summary

Ini adalah permohonan oleh defendan (lampiran 10) untuk membatalkan writ dan pernyataan tuntutan bertarikh 17 Ogos 2018. Plaintif, bekas pengarah dan bekas pengarah urusan ('MD') defendan pertama, sebuah syarikat awam yang disenaraikan di bawah pasaran utama BURSA Malaysia, sedang memohon relief deklarasi dan injunksi yang timbul daripada aduannya berkenaan dengan kesahihan mesyuarat lembaga pengarah ('BOD') defendan pertama yang diadakan pada 30 Mei 2018, di mana ia telah memutuskan bahawa kontrak kerja plaintif sebagai MD, ditamatkan dengan segera. Inti pati aduan plaintif

adalah bahawa notis yang memanggil mesyuarat pengarah dan agenda yang dikeluarkan selepas itu tidak menyatakan atau menunjukkan bahawa kontrak kerja plaintif, atau prestasinya, atau perilaku sebagai MD, akan dibincangkan di mesyuarat dan keputusan akan diambil untuk menamatkan kontrak pekerjaannya. Justeru, ia berpendapat bahawa kegagalan untuk menentukan perkara-perkara ini dalam notis atau dalam agenda membantah mesyuarat BOD dan keputusan yang diambil di dalamnya. Dengan notis bertarikh 27 April 2018 ('notis'), plaintif dan pengarah defendan pertama iaitu defendan kedua hingga kelima dimaklumkan tentang mesyuarat BOD yang akan diadakan pada 30 Mei 2018 ('mesyuarat lembaga'). Selepas itu, agenda bertarikh 21 Mei 2018 untuk mesyuarat lembaga ('agenda') diedarkan kepada, antara lain, plaintif. Semasa mesyuarat lembaga pada 30 Mei 2018, adalah diumumkan oleh pengerusi bahawa kontrak kerja plaintif sebagai MD ditamatkan dengan serta-merta. Plaintif juga memohon relif berkaitan dengan seorang Indraa Izwaan Mohd Yusof ('Indraa') yang merupakan Ketua Pegawai Operasi ('COO') defendan pertama pada masa yang material. Ia diputuskan pada mesyuarat lembaga bahawa Indraa juga akan diberhentikan. Walau bagaimanapun, Indraa bukanlah satu pihak dalam saman itu. Relif yang dipohon oleh plaintif, mengikut writ dan penyataan tuntutan, antara lain, adalah: (a) satu deklarasi bahawa mesyuarat lembaga yang diadakan pada 30 Mei 2018 adalah diadakan secara tidak betul, gagal, cacat, terbatal dan/atau tidak sah; dan (b) satu deklarasi bahawa resolusi yang diluluskan dalam mesyuarat lembaga berhubung dengan kedudukan plaintif sebagai MD defendan pertama serta kedudukan Indraa sebagai COO adalah salah, gagal, cacat, terbatal dan/atau tidak sah.

Diputuskan, membenarkan perintah seperti dikehendaki dalam lampiran 10; dan membatalkan dan menolak writ/pernyataan tuntutan:

(1) Perkara 86 adalah senyap atas keperluan untuk apa-apa perincian khusus untuk dinyatakan dalam notis atau agenda untuk mesyuarat lembaga yang diadakan pada 30 Mei 2018 (lihat perenggan 28).

(2) Sebagai perkara undang-undang syarikat atau undang-undang mesyuarat, jelas tidak ada keperluan sedemikian untuk notis mesyuarat pengarah mesti wajib mengandungi butir-butir khusus tentang perkara-perkara yang akan dibincangkan dan dipertimbangkan. Sebagai soal amalan perniagaan yang berhemat, ketelusan korporat dan mungkin sebagai perkara adil kepada individu yang disasarkan, notis atau agenda itu harus memberikan penerima/peserta mesyuarat lembaga, 'pemberitahuan' apa yang diharapkan pada mesyuarat itu supaya pihak atau pihak yang berkenaan dapat melengkapkan atau menonjolkan diri mereka dengan maklumat yang mencukupi untuk menangani isu-isu yang mungkin atau akan timbul pada mesyuarat lembaga. Tetapi amalan-amalan ideal atau terbaik atau pertimbangan yang saksama tidak dengan apa-apa cara merosakkan atau menafikan prinsip utama bahawa

notis mesyuarat atau agenda BOD yang menyatakan sedikit sebanyak mengenai perkara-perkara yang akan dibincangkan tidak ipso facto cacat, terbatal dan tidak sah (lihat perenggan 58–59).

(3) Oleh yang demikian, notis dan agenda adalah sah dan akibatnya mesyuarat lembaga dan resolusi yang diluluskan di atas adalah sah dan wajar dari perspektif undang-undang syarikat dan undang-undang mesyuarat. Relif-relif yang dipohon bagi pihak Indraa adalah tidak boleh dipertimbangkan secara sah dan merupakan manifestasi penyalahgunaan proses (lihat perenggan 63).

(4) Plaintif tidak boleh mendekati mahkamah sivil untuk suatu perintah pengembalian semula kerana remedi itu adalah semata-mata di dalam bidang kuasa Mahkamah Perusahaan menurut s 20 Akta Perhubungan Perusahaan 1967 (lihat perenggan 64).]

Notes

For cases on notice, see 3(1) *Mallal's Digest* (5th Ed, 2018 Reissue) paras 655–668.

Cases referred to

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770; [1995] 3 CLJ 639, CA (refd)

Bentley-Stevens v Jones and others [1974] 2 All ER 653; [1974] 1 WLR 638, Ch D (refd)

Browne v La Trinidad (1887) 37 Ch D 1, CA (refd)

Chan Choon Ming v Low Poh Choon & Ors [1994] MLJU 351; [1995] 1 CLJ 812, HC (refd)

Dato' Jaffar bin Mohd Ali v Jastera Berhad [1999] MLJU 575; [2000] 8 CLJ 106, HC (refd)

Dr Mahesan & Ors v Ponnusamy & Ors [1994] 3 MLJ 312, HC (refd)

Eastern Resources of Australia Ltd v Glass Reinforced Products (GRP) Pty Ltd (1986) 10 ACLR 496 (refd)

Hayes v Bristol Plant Hire Ltd and Others [1957] 1 All ER 685, Ch D (refd)

Jerry Ngiam Swee Beng v Abdul Rahman bin Mohd Rashid & Anor and other actions [2003] 6 MLJ 448, HC (refd)

Khoo Choon Yam v Gan Miew Chee @ Gan Khuan Poh & Ors [2000] 6 MLJ 20, HC (refd)

La Compagnie de Mayville v Whitley [1896] 1 Ch 788, CA (refd)

Lee Nyuk Heng & Anor v Pembangunan Ladang Hassan Sdn Bhd & Others [2002] MLJU 684; [2003] 8 CLJ 237, HC (refd)

Mohd bin Ahmad v Yang Di Pertua Majlis Daerah Jempol, Negeri Sembilan & Anor [1997] 2 MLJ 361; [1997] 3 CLJ 135, FC (refd)

Perbadanan Perwira Harta Malaysia & Anor v Mohd Baharin bin Hj Abu [2010] 5 MLJ 295; [2010] 6 CLJ 1, CA (refd)

Polybuilding (S) Pte Ltd v Lim Heng Lee and others [2001] 2 SLR (R) 95 (refd)

Pulbrook v Richmond Consolidated Mining Company [1878] 9 Ch D 610, Ch D (distd)
Tan Guan Eng & Anor v Ng Kweng Hee & Ors [1992] 1 MLJ 487; [1991] 3 CLJ Rep 74, HC (refd)
Young v Ladies' Imperial Club, Ltd [1920] 2 KB 523; [1920] All ER Rep 223, CA (distd)

Legislation referred to

Industrial Relations Act 1967 s 20

Alan Wong (Cliff Sieow with him) (Zain, Megat & Murad) for the plaintiff.
Idza Hajar Ahmad Idzam (Mohd Mifzal bin Mohd Murshid with her) (Zul Rafique & Partners) for the defendants.

Nantha Balan J:

INTRODUCTION

[1] This is an application by the defendants ('encl 10') to strike out the writ and statement of claim dated 17 August 2018. In this action, the plaintiff is seeking declaratory and injunctive reliefs arising out of her complaint with regard to the validity of the board of directors meeting of the first defendant held on 30 May 2018, wherein it was decided that the plaintiff's contract of employment as the managing director, be terminated forthwith. The gist of the plaintiff's complaint in the present suit is that the notice calling for the meeting of directors and the agenda which was issued thereafter did not state or indicate that the plaintiff's contract of employment, or her performance, or conduct as managing director, was to be discussed at the meeting and that a decision would be taken to terminate her contract of employment. As such, it is contended that the failure to specify these matters in the notice or in the agenda vitiates the meeting of the board of directors and the decisions taken thereat.

CONTRACT OF EMPLOYMENT — MANAGING DIRECTOR

[2] The plaintiff was a former director and a former managing director of the first defendant. The plaintiff was one of the first directors of the first defendant as provided for in article 68 of the first defendant's articles of association dated 27 April 2016 ('the Constitution'). The first defendant is a public company listed under the main market of BURSA Malaysia. The second to fifth defendants are directors of the first defendant.

[3] The plaintiff was appointed as the managing director ('MD') of the first defendant from 2 April 2014–1 April 2017 by way of a contract of employment dated 2 April 2014 ('the contract of employment'). A meeting was held on 31 May 2017 where it was resolved that the plaintiff was to be

re-appointed as the MD for a further term of three years effective from 2 April 2017–1 April 2020 with the same terms of employment as set out in the contract of employment, save that a clause was added, that the contract of employment will be null and void if the first defendant is classified as a PN17 company. PN17 stands for Practice Note 17/2005 which is issued by BURSA Malaysia. Essentially, a company with PN17 status, denotes that it is in financial distress.

NOTICE OF BOARD OF DIRECTORS MEETING

[4] By way of a notice dated 27 April 2018 ('the notice'), the plaintiff and the directors of the first defendant ie second to fifth defendants were informed of a board of directors meeting which was to be held on 30 May 2018 ('the board meeting'). The convening of a meeting of the directors is regulated by article 86 of the Constitution. It reads:

> The Directors may meet together for the dispatch of business adjourned and otherwise regulate their meetings as they think fit. A director may at any time and the secretary shall on the requisition of a Director *summon a meeting of the Directors by giving them not less than seven (7) days' notice thereof unless such requirement is waived by them*.

[5] In this case, there is no dispute that the notice was received more than seven days before the board meeting was convened. The notice was therefore issued in accordance with article 86 of the Constitution. The plaintiff was also present at the board meeting on 30 May 2018.

AGENDA FOR THE BOARD MEETING

[6] Thereafter, an agenda dated 21 May 2018 for the board meeting ('the agenda') was circulated to, inter alia, the plaintiff. The agenda listed a number of matters to be discussed during the board meeting. The agenda included, inter alia, the financial results of the first defendant for the fourth quarter of the financial year ended on 31 March 2018. The agenda also included, inter alia, 'to receive matters arising' and 'to transact any other matters'. The agenda reads as follows:

1. To confirm the following minutes of the Board of Directors meeting:
   (a) minutes of the 5th Board of Directors meeting of the Company held on 27th February, 2018;
   (b) minutes of the Special Board of Directors meeting of the Company held on 30th March 2018; and
   (c) minutes of the Special Board of Directors meeting of the Company held on the 20th April, 2018.

2. To receive the following minutes of the Audit Committee meeting:

   (a) the minutes of the 5th Audit Committee meeting of the Company held on 20th February, 2018;

   (b) the minutes of the Special Audit Committee meeting of the Company held on 14th March, 2018; and

   (c) the minutes of the Special Audit Committee meeting of the Company held on 2nd May, 2018.

3. To confirm the minutes of the Extraordinary General meeting of held on 17th May, 2018;

4. To receive Matters Arising.

5. To approve the announcement of the financial results to Bursa Malaysia Securities Berhad in respect of the 4th Quarter of FY 2017/2018 ended 31st March, 2018.

6. To receive the Group Performance and the Management Progress Report for the period ended 31st March, 2018.

7. To transact any other matters.

[7] Prior to the board meeting, on 28 May 2018, an audit committee meeting was held where the first defendant's auditor briefed the audit committee and the second defendant (*in his capacity as the chairman of the audit committee*), and highlighted, inter alia, the first defendant's deteriorating financial performance and its ability to continue as a going concern. As a result, the first defendant's financial performance would be deemed to have triggered circumstances giving rise to the possibility of the first defendant being classified as a PN17 company.

[8] During the board meeting on 30 May 2018, the second to fourth defendants were present as the directors of the first defendant. The chairman of the audit committee ie the second defendant, briefed the board of directors ('BOD') of the findings made in the audit committee meeting. The fifth defendant was absent with apology. It is important to note that the plaintiff was present at the board meeting. However, she walked out of the board meeting as soon as it was announced by the chairperson that the plaintiff's contract of employment as the MD was to be terminated forthwith. It may noted also that at the board meeting, the plaintiff was not removed as a director of the first defendant. In fact, she continued to be a non-independent, non-executive director of the first defendant. As events turned out, the plaintiff ceased to be a director of the first defendant when she failed to be re-elected at the annual general meeting of the first defendant on 24 August 2018.

A THE BOARD MEETING

[9] According to the defendants, the decision to terminate the plaintiff as the MD was taken because of the plaintiff's mismanagement, poor management, non-management of the first defendant and gross negligence. Thus, the BOD resolved to terminate the plaintiff's services as the first defendant's MD. The relevant part of the minutes of the board meeting (*with emphasis added*) in relation to the termination of the plaintiff's contract of employment reads as follows:

NOTED:

The Board took note of the Group Management Report for the period ended 31st March, 2018. However, the Audit Committee wish to highlight to the Board of the concerns raised by the Auditors based on their progress report on the Company's Accounts as of 28th May 2018, presented to the Audit Committee during the recent Committee meeting, inter alia:

(i) the possible assertion by the Auditors on Emphasis of Matter: Going Concern Assumption due to the Company's poor and deteriorating cashflow over the past 5 years, where the Auditor had tabled the Group's Loss Net of Tax which showed that the financial performance of the Group as follows:

Loss Net of Tax	RM'000
31st March 2018	(10,722)
31st March 2017	(15,837)
31st March 2016	(6,158)
31st March 2015	(164)
31st March 2014	(892)

On this issue, the Chairman agreed with the Board **that the figures presented by the Managing Director during board meetings had sometimes mislead the Board on the true and actual position of the Group and Company's financials, where all the Budget figures presented showed profit but at the end it was loss making.**

(ii) the forthcoming technical classification as PN 17 Company based on the threshold of 50% due to the reporting by the Auditors on (i) above.

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(ii) the forthcoming technical classification as PN 17 Company based on the threshold of 50% due to the reporting by the Auditors on (i) above.

Wherein based on the unaudited numbers the Shareholders Equity stands at RM29.384 million against the Share Capital being at RM60.116 million (48.87%). **It is only a matter of a couple of months before the Company is declared as PN 17 Company;** and

(iii) the proposed action plans to be considered by the Management i.e. Re-valuation of Asset (which include the formulation of policies) or securing an undertaking by the largest shareholders i.e. BHR Enterprise Sdn Bhd (BHR) to provide Financial Support Letter and/or Capital Injection. Despite the fact raised during the Audit Committee Meeting that BHR has indicated their preliminary

Managing Director

	refusal for any capital injection and also for the issuance of Financial Support Letter in favour of the Group and the Company, the Committee had requested for MD to approach BHR to seek their support. (iv) on the Auditor's finding in relation to **an advance made by MD in the amount of RM1.5 million towards the payment of deposit to the Vendor for the acquisition of AirPak**. The Board unanimously agreed that **this advance made by MD was never been agreed to or approved by the Board and that it was never been notified to the Board by anyone from the Management.** The Audit Committee and the Board was only informed of the matter by the Auditor recently. Hence due to this finding, MD should justify to the Board on such act especially since this unauthorized act and non-disclosure is deemed as serious misconduct by MD, and for the Management to update the Board accordingly on whether any announcement was made or that the non-disclosure will cause the Company to be reprimanded by Bursa. During the Audit Committee Meeting, MD was requested to explore the proposed actions with the Auditors and to consider possible solutions to improve the Company's position before 31st July, 2018, failing which the Company will have no choice but to make announcement to Bursa for falling into the classification of PN17 Company. **CONCLUSION:** Upon deliberation on the financial loss suffered by the Group and the Company especially on the huge accumulated losses of RM10.7 million and considering that there was no proper paper prepared or any updates being offered by the MD on the actions plans to be taken by her and the Management team to address the concerns raised by the Auditors and the Audit Committee at the recent Audit, Committee Meeting, the Chairman believed **that the Board had no choice but to execute immediate and drastic actions in order to safeguard the interest of the Company.** **The Chairman then reminded the Board that by virtue of the mandate given to her by BHR in their previous letter (the content of which was disclosed during the Board Meeting held on 20th April, 2018), and upon recent consultation between Chairman and representative of BHR, the Chairman has obtained the consent of BHR to terminate the service of MD and COO with immediate effect.**	**Managing Director**

THE TERMINATION NOTICE

[10] Subsequent to the board meeting, the first defendant issued a termination notice dated 30 May 2018 ('the termination notice') to the

plaintiff informing her of the same and the reasons for her termination ie, inter alia, the plaintiff's mismanagement, poor management, non-management and gross negligence resulting in the poor performance of the first defendant, which significantly exposed the first defendant to be classified as a PN17 company.

COMPLAINT TO THE INDUSTRIAL RELATIONS DEPARTMENT

[11] The plaintiff was utterly dissatisfied with the BOD's decision to terminate her contract of employment. She promptly lodged a complaint with the Industrial Relations Department ('IRD') of the Ministry of Human Resources. The complaint to the IRD was made pursuant to s 20 of the Industrial Relations Act 1967 ('the s 20 complaint') on the grounds that she had been dismissed without just cause or excuse. Section 20 of the Industrial Relations Act 1967 reads as:

> 20 Representations on dismissals
>
> (1) *Where a workman*, irrespective of whether he is a member of a trade union of workmen or otherwise, *considers that he has been dismissed without just cause or excuse by his employer, he may make representations in writing to the Director Generalto be reinstated in his former employment*; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.
>
> (1A) The Director General shall not entertain any representations under subsection (1) unless such representations are filed within sixty days of the dismissal:
>
> Provided that where a workman is dismissed with notice he may file a representation at any time during the period of such notice but not later than sixty days from the expiry thereof.
>
> (2) Upon receipt of the representations *the Director General shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at; where the Director General is satisfied that there is no likelihood of the representations being settled, he shall notify the Minister accordingly*.
>
> (3) *Upon receiving the notification of the Director General under subsection (2), the Minister may, if he thinks fit, refer the representations to the Court for an award.*
>
> (4) Where an award has been made under subsection (3), the award shall operate as a bar to any action for damages by the workman in any court in respect of wrongful dismissal. (Emphasis added.)

[12] Pursuant to the s 20 complaint, a reconciliation meeting was convened by the IRD on 13 August 2018. The meeting was attended by the plaintiff and the first defendant's representative(s). However, the reconciliation session was not successful. The plaintiff's complaint of dismissal without just cause or excuse, has since been referred to the Industrial Court by the Minister of

Human Resources and registered as Industrial Court of Malaysia Case No 7–4–2875–18.

[13] The plaintiff's claim in the present suit is principally anchored on the validity and/or regularity of the board meeting and the resolutions passed therein. The plaintiff's pleaded case is not in relation to the alleged wrongful termination of the plaintiff's contract of employment as MD. It should be mentioned here that the plaintiff is also seeking reliefs in respect of one Indraa Izwaan Mohd Yusof ('Indraa') who was the Chief Operating Officer ('COO') of D1 at the material time.

[14] It was decided at the board meeting that Indraa was also to be dismissed as D1's COO. However, Indraa is not a party to this suit. The reliefs sought by the plaintiff, as per the writ and statement of claim, are as follows:

(a) a declaration that the board meeting held on 30 May 2018 is wrongfully convened, ineffective, invalid, null and/or void;

(b) a declaration that the resolution passed in the board meeting in relation to the plaintiff's position as the MD of the first defendant as well as Indraa's position as COO is wrongful, ineffective, invalid, null and/or void;

(c) a declaration that the plaintiff's termination notice and Indraa's termination notice are wrongful, ineffective, invalid, null and/or void;

(d) a declaration that the plaintiff remains rightfully the MD of the first defendant, lawfully elected and that she has not vacated her office;

(e) an injunction order to restrain and prevent the second defendant, third defendant, fourth defendant and fifth defendant, whether by themselves, their servants, their agents or otherwise howsoever wrongfully preventing the plaintiff from discharging her duties as the MD of the first defendant in any manner whatsoever;

(f) an injunction order to restrain and prevent the second defendant, third defendant, fourth defendant and fifth defendant from whether by themselves, their servants, their agents or otherwise howsoever excluding the plaintiff (be it constructively or physically) from any board meeting of the first defendant in any manner whatsoever; and

(g) an injunction order to compel the second defendant, third defendant, fourth defendant and fifth defendant, whether by themselves, their servants, their agents or otherwise to retract the first defendant's announcement on 30 May 2018.

VALIDITY OF THE BOARD MEETING — THE ARGUMENTS

[15] As for the validity of the notice, the board meeting and resolution to terminate the plaintiff's contract of employment, it was submitted for the plaintiff that a resolution of a board of directors can be struck out and/or declared invalid purely on the grounds of insufficiency of content in the notice and/or the agenda.

[16] In this regard, it is clear that the notice and the agenda did not expressly or implicitly state that the plaintiff's performance, contract of employment and tenure as MD were to be discussed at the board meeting. As such, factually, the plaintiff is correct in asserting that the notice and the agenda are devoid of any information or particulars or even a hint of what was to be discussed vis a vis the contract of employment.

[17] However, the question of obvious legal and practical importance from the perspective of corporate law and the law of meetings is whether a board of directors' resolution can be struck down purely on the grounds of insufficiency of content or lack of particulars in the notice calling for a meeting of the directors, or in the agenda pertaining to the said meeting. Tersely put, the question is whether insufficiency or absence of content or particulars in the notice or agenda vitiates the meeting of the BOD.

[18] For the defendants, it was argued that the board meeting was validly convened, and that regardless of how important the topic was, there was no legal requirement for the matters that are to be discussed and/or decided at the meeting to be specifically stated in the notice and, in any event, to be stated in the agenda. Continuing with this proposition, counsel for the defendants added that it was perfectly valid and legitimate for the directors to discuss the matter pertaining to the plaintiff's alleged poor performance or her contract of employment, under 'matters arising' and '... any other matters'.

[19] The main plank of the plaintiff's case rested heavily on the judgment of Gopal Sri Ram JCA (*later FCJ*) in *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770; [1995] 3 CLJ 639 (CA) ('*Aik Ming*'s case') (pp 804–805 (MLJ)) where he opined obiter, that:

> Whilst particular cases may be distinguished upon their special facts, *I take the proposition to be well settled that, unless the articles of a company provide to the contrary, no meeting of a board is valid, unless reasonable notice of it and the relevant agenda that is to be discussed at it is given to the directors.*
>
> In *Young v Ladies Imperial Club Ltd* [1920] 2 KB 523; [1920] All ER Rep 223 is authority for that proposition. In that case, it was held that, 'where a special meeting

A of a committee or any other body has to be specially convened for a particular purpose, every member of that body ought to have notice of and a summons to the meeting, and accordingly the omission to summon one member of a committee *and the fact that the notice did not state the object of the meeting with sufficient particularity vitiated the proceedings of that body*' (per Abdoolcader J in *PP v Datuk Hj Harun bin Hj Idris & Ors* [1977] 1 MLJ 180 at p 189). (Emphasis added.)

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[20] The plaintiff also relied on the case of *Pulbrook v Richmond Consolidated Mining Company* [1878] 9 Ch D 610 ('*Pulbrook*'s case') for the proposition that the plaintiff, as a shareholder, director and managing director, has a right
C to sue for the injury done to her, namely the decision by the BOD to terminate her services as MD of D1. I shall deal with *Pulbrook*'s case in the later part of this judgment. For now, it would suffice to state that the cases where the passage from *Aik Ming*'s case was utilised to impugn notices to convene meetings of the board of directors are:

D

(a) *Lee Nyuk Heng & Anor v Pembangunan Ladang Hassan Sdn Bhd & Others* [2002] MLJU 684; [2003] 8 CLJ 237 (per Ian HC Chin J);

(b) *Jerry Ngiam Swee Beng v Abdul Rahman bin Mohd Rashid & Anor and other actions* [2003] 6 MLJ 448 (per Vincent Ng J); and

E

(c) *Khoo Choon Yam v Gan Miew Chee @ Gan Khuan Poh & Ors* [2000] 6 MLJ 20 (per Hamid Mohamad J — later CJ).

[21] Quite apart from the issue pertaining to the contents of the notice or
F the agenda, the defendants argued that the plaintiff's contention that the first defendant's failure to state explicitly or at all in the notice and/or agenda of the intended termination of the plaintiff's contract of employment is devoid of merits, as it is not a requirement in law and/or under the Constitution that all matters need to be stated explicitly in the notice and/or agenda. Hence, it was
G argued for the defendants that the board meeting was rightly and validly convened in accordance with the Constitution and in law. Counsel for the defendants relied on the following cases to argue that there is no requirement in law for matters to be specifically mentioned in the notice or in the agenda:

(a) *La Compagnie de Mayville v Whitley* [1896] 1 Ch 788 (CA);

H

(b) *Dr Mahesan & Ors v Ponnusamy & Ors* [1994] 3 MLJ 312 (HC); and

(c) *Eastern Resources of Australia Ltd v Glass Reinforced Products (GRP) Pty Ltd* (1986) 10 ACLR 496.

I THE PLAINTIFF SUING FOR INDRAA'S BENEFIT

[22] The defendants also contend that the reliefs sought on behalf of Indraa

are legally untenable. In this regard, it is clear from reliefs sought in the writ and statement of claim that the plaintiff is seeking, inter alia, a declaration that the resolution passed in relation to Indraa's position as the first defendant's COO, and the termination notice issued to Indraa, were wrongful, ineffective, invalid, null and/or void.

[23] It was emphasised for the defendants that Indraa is not a party to the present suit. Hence, the plaintiff's claim for, inter alia, reliefs in favor of Indraa, who is a non-party and/or stranger to the suit, is a non-starter. It was contended for the defendants that a party to a suit is not entitled to claim reliefs for a non-party to the suit as established in the High Court case of *Dato' Jaffar bin Mohd Ali v Jastera Berhad* [1999] MLJU 575; [2000] 8 CLJ 106:

> Tan is not a party to this suit and he has not applied to this court for any injunctive relief. That being the case, it is neither necessary nor proper for this court to consider any injunctive relief in his favour. *Our courts do not function as busy bodies and it has never been the business of our courts to give an order in favour of or against any person or persons who are non-parties or strangers to the cases before our courts*.

REINSTATEMENT NOT AVAILABLE IN THE CIVIL COURT

[24] Next, it was argued for the defendants that by the declarations and injunctions that are sought, the plaintiff is effectively impugning the board meeting and thereby setting aside the BOD's decision to terminate the plaintiff as MD of the first defendant and to indirectly and effectively restore or reinstate her to the position as MD of the first defendant.

[25] In this regard, it was submitted that the plaintiff's relief of reinstatement, as a matter of law, is a relief which is confined to the statutory jurisdiction of the Industrial Court as per s 20 of the Industrial Relations Act 1967. Counsel referred to *Perbadanan Perwira Harta Malaysia & Anor v Mohd Baharin bin Hj Abu* [2010] 5 MLJ 295; [2010] 6 CLJ 1 where the Court of Appeal, held, inter alia, as follows:

> *In our view although the word 'reinstatement' does not appear anywhere in the respondent's pleading, what in effect was sought by the respondent was reinstatement*. He wanted to be reinstated to his former post and be entitled to seniority and other benefits lawfully due to him which included salaries and bonus (see *Mohd Ahmad*). *The declaration sought by him would therefore inevitably amount to or involve specific performance of his contract of service. The question is — was he entitled to it? The answer is in the negative*.
>
> ...
>
> The respondent could have claimed for wrongful dismissal. But he did not do so. In

A his statement of claim he pleaded that the termination of his service was null and void and of no consequence and that he was still an employee of the first respondent. Consequently, he prayed for a declaration in terms of the prayer in his statement of claim. *His pleaded case was clearly for a declaration that his termination was null and void and that he was praying for reinstatement, not wrongful dismissal pursuant to a breach in his contract of service. For such a pleaded case, he was not without any remedy. He could have filed his case in the Industrial Court pursuant to the Industrial Relations Act 1967*. (Emphasis added.)

[26] The next case that was relied upon by the defendants is *Mohd bin Ahmad v Yang Di Pertua Majlis Daerah Jempol, Negeri Sembilan & Anor* [1997] 2 MLJ 361; [1997] 3 CLJ 135 where the Federal Court held, inter alia, as follows:

A claim by an employee for reinstatement still has that ring of incongruity to make lawyers extremely wary, for they are always acutely aware of the principle that the law will not specifically enforce a contract without any danger of service between master and servant and that the master has always the power to dimiss him in breach of such contract without any danger of being asked or compelled to re-employ him, thus the only remedy left to the servant is to sue in damages. *The principle is that the court will not order specific performance of a contract of personal service.*

Following the principle aforesaid, (hereafter the said principle), the *logical result will be that a dismissed employee cannot claim any declaration that* 'his dismissal was void' and if he wants to cast his pleading in the form of a declaration, then he can claim a declaration, eg, he was dismissed in breach of the contract of service and that he claims damages for such breach. To claim that his dismissal was void would indicate that he wants to have his job back. *It is therefore understandable and it was quite natural for learned Counsel to apply under O 18 r 19 of the Rules of the High Court 1980 to strike out the statement of claim for such reinstatement* ... (Emphasis added.)

ANALYSIS AND CONCLUSION

[27] The necessary starting point in this case is whether the notice was in compliance with the Constitution of the first defendant. In this regard, it is plainly obvious and quite unarguable that the notice was in compliance with article 86 of the Constitution which stipulated that no less than seven days notice must be given for any meeting of the BOD. Here, the notice was issued on 24 April 2018 and the board meeting was held on 30 May 2018. Clearly, the timeline of seven days was vastly exceeded in this case.

[28] Next, it should be observed that article 86 is silent on the need for any specific details to be mentioned in the notice or agenda for the board meeting which was held on 30 May 2018. The plaintiff in fact attended the board meeting. Hence, there is no issue in so far as sufficiency of notice is concerned.

The only issue is whether the notice and/or the agenda and by extension, the board meeting, is invalid and null and void by reason of the fact that the notice and/or agenda did not state that the plaintiff's poor performance, poor management or negligent performance as MD was to be discussed and/or that a decision to terminate her contract of employment was to be deliberated upon and/or that a decision will be taken at the board meeting.

[29] As it turned out, at the board meeting, the chairperson informed those present that for the reasons as stated in the minutes of the board meeting, a decision had been taken to terminate the plaintiff's contract of employment as MD of the first defendant. From the evidence as presented, the plaintiff appears to have been 'blind-sided' and taken by complete surprise. She was livid and walked out of the board meeting. Thereafter, a formal letter of termination of employment was sent to the plaintiff. She then lodged the s 20 complaint.

[30] I shall now deal with the relevant case law on whether there is a need for details or specifics to be stated in the notice or in the agenda. I shall start with *Pulbrook*'s case. It is important to understand the context and the peculiar facts of *Pulbrook*'s case. The application in *Pulbrook*'s case was by way of a motion to restrain the directors of the company from restraining or interfering with the plaintiff acting as a director of the company. The articles of the company included an eligibility requirement for a director that he should be the registered owner of a nominal value of shares in his own right and an obligation to vacate office if he held less than that amount. Mr Pulbrook had enough shares registered in his name and was elected a director, although before his election he had transferred his shares to one Cuthbert by way of security for a loan. Cuthbert then registered the transfer and became the registered owner.

[31] As a result, Pulbrook was excluded from board meetings. Prior to the hearing, Pulbrook had obtained an order from the Court of Common Pleas and affirmed by the Divisional Court rectifying the register of shareholders on his undertaking not to question the prior acts of the directors. That finding said nothing about his qualification as a director. A principal issue before Sir George Jessel MR was whether Pulbrook was validly elected as a director.

[32] The plaintiff contended that the requirement to be a shareholder did not require beneficial ownership. The company contended first that no personal cause of action existed; the only action lay at the suit of the company. Secondly, the company contended that, when elected, Pulbrook was not the holder in his own right of the necessary number of shares. Thirdly, it contended that, even if he was validly elected, once the transfer to Cuthbert was registered, Pulbrook was bound to vacate office under the terms of the articles. Finally, it argued that being restored to the register of shareholders by the Court of

A Common Pleas did not entitle him to take his seat as a director. The court first considered as a matter of law whether there was a personal action by a director who is improperly and *without cause excluded by his brother directors from the board*. Sir George Jessel MR said:

B > ... Now, it appears to me that this is an individual wrong, or a wrong that has been done to an individual. It is a deprivation of his legal rights for which the directors are personally and individually liable. He has a right by the constitution of the company to take part in its management, to be present, and to vote at the meetings of the board of directors. He has a perfect right to know what is going on at these meetings.
>
C > It may affect his individual interest as a shareholder as well as his liability as a director, because it has been sometimes held that even a director who does not attend board meetings is bound to know what is done in his absence.
>
> Besides that, he is in the position of a shareholder, of a managing partner in the affairs of the company, and he has a right to remain managing partner, and to receive
D > remuneration for his services. It appears to me that for the injury or wrong done to him by preventing him from attending board meetings by force, he has a right to sue.

E **[33]** *Pulbrook*'s case was followed in the following cases:

(a) *Hayes v Bristol Plant Hire Ltd and Others* [1957] 1 All ER 685;

(b) *Tan Guan Eng & Anor v Ng Kweng Hee & Ors* [1992] 1 MLJ 487; [1991] 3 CLJ Rep 74;

F (c) *Chan Choon Ming v Low Poh Choon & Ors* [1994] MLJU 351; [1995] 1 CLJ 812;

(d) *Khoo Choon Yam v Gan Miew Chee @ Gan Khuan Poh & Ors* [2000] 6 MLJ 20; and

G (e) *Polybuilding (S) Pte Ltd v Lim Heng Lee and others* [2001] 2 SLR (R) 95.

[34] It would suffice for me to refer in particular to the judgment of Edgar Joseph J in *Tan Guan Eng & Anor v Ng Kweng Hee & Ors* [1992] 1 MLJ 487
H at pp 500–501 where the learned judge said:

> *If a director is excluded from participation in the management of a company, he can sue in his own right as a director.* So, for example, in *Pulbrook v Richmond Consolidated Mining Co*, an individual director sued the company in question and the other directors, the basis of his action being that he was being improperly excluded from
I the boardroom and from otherwise discharging his duties as a director, for the other directors treated him as being not a director at all. In the course of his judgment the Master of the Rolls said at p 612:
>
> > The first question is, whether a director who is improperly and without cause excluded by his brother directors from the board from which they claim the right

to exclude him, is entitled to an order restraining his brother directors from so excluding him.

In this case a man is necessarily a shareholder in order to be a director, and as a director he is entitled to fees and remuneration for his services and it might be a question whether he would be entitled to the fees if he did not attend meetings of the board. He has been excluded. Now it appears to me that this is an individual wrong, or a wrong that has been done to an individual. It is a deprivation of his legal rights for which the directors are personally and individually liable.

He has a right by the constitution of the company to take a part in its management, to be present, and to vote at the meetings of the board of directors. He has a perfect right to know what is going on at these meetings. It may affect his individual interest as a shareholder as well as his liability as a director, because it has been sometimes held that even a director who does not attend board meetings is bound to know what is done in his absence. (Emphasis added.)

[35] On the other hand, the defendants placed considerable emphasis on the decision of Zakaria Yatim J in *Dr Mahesan & Ors v Ponnusamy & Ors* [1994] 3 MLJ 312 (HC) ('*Dr Mahesan*'s case').

[36] In that case, the plaintiffs sought declarations to invalidate the 19th board of directors' meeting ('the meeting') held on 25 April 1994 as being null and void because, insufficient notice had been given, ie the notice was received only on 20 April 1994. The plaintiff also sought injunctions restraining the defendants from acting on the resolutions passed at the meeting. As a result of the meeting of the board of directors, the first plaintiff was removed a managing director of the company. The agenda for the meeting contained in the notice listed one of the items to be discussed as being the allegations of misconduct against the first plaintiff and his removal as managing director, but did not contain particulars of the allegations.

[37] Thus, the specific complaint by the first plaintiff was that the notice of meeting was deficient in terms of the particulars of the allegations of misconduct against the first plaintiff (*who was then the managing director*). Zakaria Yatim J declined to strike down the resolutions passed at the meeting. He opined at p 321 of the judgment that there is no general requirement in law for a notice to convene a board meeting to state the business that is to be transacted, whether in general terms or in a specific sense. He said:

Now I turn to Dr Mahesan's request for particulars regarding the allegations. In the notice quoted above, an agenda of the meeting is also included. In my opinion an agenda of the business to be transacted at the meeting is not required in law to be given. In *Eastern Resources of Australia Ltd v Glass Reinforced Products (GRP) Pty Ltd* 10 ACLR 496, Connolly J said at p 500 that 'there is not any general requirement that the business to be conducted at a meeting of directors be specified in the notice calling the meeting …'. In *La Compagnie* [1896] 2 Ch 788, Lindley LJ at p 797 said:

> The great point is whether, when a directors' meeting is to be held, it is necessary to give a notice not only of the meeting, but of the business to be transacted at the meeting. I am not prepared to say as a matter of law that it is necessary ... I cannot now say ... that as a matter of law the business conducted at a directors' meeting is invalid if the directors have had no notice of the kind of business which is to come before them.

Since in law, the business to be transacted at the meeting of directors is not required to be included in the notice, it is therefore not the requirement of the law that the agenda be included in the said notice. In the circumstances Dr Mahesan has no reason to complain that he did not have the particulars of the allegations since the secretary was not obliged to provide the particulars in the notice.

From what I have stated above, I am of the opinion:

(a) *that the notice of the board of directors' meeting dated 15 April 1994 is valid in law*;

(b) that the notice of the meeting was duly served on the plaintiffs;

(c) that in the circumstances of this case, sufficient time was given to the Dr Mahesan and Dr Ampikai to attend the 19th board of directors' meeting; and

(d) that all proceedings and minutes of the board of directors' meeting held on 25 April 1994 are valid. (Emphasis added.)

[38] I turn now to the seminal decision of Lindley LJ in *La Compagnie de Mayville v Whitley* [1896] 1 Ch 788 which was referred to in *Dr Mahesan*'s case. In that case, the English Court of Appeal opined that *in the case of a company it is not necessary in the notice convening the meeting of the directors to state what the business to be transacted at that meeting is to be.* Lindley LJ, famously observed at p 797 as follows:

> The great point is *whether, when a directors' meeting is to be held, it is necessary to give a notice not only of the meeting, but of the business to be transacted at the meeting. I am not prepared to say as a matter of law that it is necessary.* As a matter of prudence it is very often done, and it is a very wise thing to do it; but it strikes me, as it struck Lord Tenterden in *Rex v Pulsford* (1828) 8 B & C 350; 108 ER 1073, that there is an immense difference between meetings of shareholders or corporators and meetings of those whose business it is to attend to the transaction of the affairs of the company or corporation.
>
> It is not uncommon for directors conducting a company's business to meet on stated days without any previous notice being given either of the day or of what they are going to do. Being paid for their services — as they generally are, and as is the case in this company — it is their duty to go when there is any business to be done, and to attend to that business whatever it is; and I cannot now say for the first time that as a matter of law the business conducted at a directors' meeting is invalid if the directors have had no notice of the kind of business which is to come before them.

> Such a rule would be extremely embarrassing in the transaction of the business of companies. (Emphasis added.)

[39] It is relevant and imperative to note that in *Aik Ming*'s case, the issue was with regard to whether the notice of meeting of the board of directors in respect of the crucial meeting on 17 April 1990 had been served on the first to third plaintiffs. The High Court held that there was no evidence of service of notice and the finding in this regard was upheld by the Court of Appeal. The Court of Appeal proceeded to state (pp 804–805) that the failure to serve the notice and/or to state the object of the meeting with sufficient particularly in the notice would *vitiate* the meeting of the directors. However, it is absolutely imperative to note that the issue in *Aik Ming*'s case, was only with regard to the complaint of *non-service of the notice of meeting* and *not lack of particulars in the notice*. Hence, the observation by the Court of Appeal in *Aik Ming*'s case in relation to the failure to state the object of the meeting was plainly 'obiter'. No doubt, it is persuasive, but it is not binding on this court.

[40] Next, I turn to the case of *Jerry Ngiam Swee Beng v Abdul Rahman bin Mohd Rashid & Anor and other actions* [2003] 6 MLJ 448 (HC) where the High Court (per Vincent Ng J) applied *Aik Ming*'s case and struck down the impugned directors' meetings as notices of those meetings were not served. The High Court held:

> (4) The validity of all that transpired at the meetings depended on whether proper notice of those meetings had been served. Notice should be given in the proper manner. Notice of the meeting should be served on the director concerned accordingly to the Articles of Association. Where, as here, the Memorandum of Association was silent on the issue, the court had to examine the previous practice in calling directors meetings (see p 464C, H); *Dr Mahesan & Ors v Ponnusamy & Ors* [1994] 3 MLJ 312 followed. *No proper or reasonable notice of the three directors meetings was served on Jerry Ngiam and the meetings were therefore null and void.* The notice sent by fax to Jerry Ngiam at 4.16pm a day before the meeting could not constitute reasonable or normal notice see p 468C-D); *First Nominee (Pte) Ltd v New Kok Ann Realty Sdn Bhd* [1983] MLJ 76 (folld) followed.

[41] The next case to be considered is *Lee Nyuk Heng & Anor v Pembangunan Ladang Hassan Sdn Bhd & Others* [2002] MLJU 684; [2003] 8 CLJ 237, where the High Court (per Ian Chin J) applied *Aik Ming*'s case and held that the notice to convene a board of directors' meeting was invalid as *the notice only stated that it was to fix a date for the 2001 Annual General Meeting* and so the plaintiffs did not attend the board meeting. The court held that the *board meeting was invalid*. The following passage from the judgment explains the reasons:

> It is clear from the notice that the matter for discussion is the fixing of a date for the 2001 AGM. According to the plaintiffs, it was because of this unimportant matter

of the choosing of a date for the meeting that it led them to decide not to attend the meeting that was scheduled for 30 November 2000. On the said date, apart from fixing the date of the AGM, the 5th defendant was elected as the chairman of the board of directors.

A board meeting was then held on 6 December 2001 at which meeting the fifth defendant used a casting vote on the basis that he was the chairman and the motion to remove the first plaintiff as managing director was carried and he was replaced by the sixth defendant. *This led the plaintiffs to complain that the notice of the board meeting was bad as it omitted to spell out in the agenda the proposal to appoint the fifth defendant as the chairman*.

[42] And at pp 13–14 (MLJU); pp 248–249 (CLJ) of the judgment, the learned judge concluded as follows:

I would respectfully follow what the Court of Appeal had said in that case to conclude that the notice of the meeting was not sufficient to enable the matter of the appointment of a chairman to be the matter of a resolution as the matter merely speaks of the fixing of a date for the holding of the AGM. *I am prepared to go as far as to say it is highly arguable that the failure to state the matter of the proposal to appoint the 5th defendant as the chairman was deliberate as the surely such matter is far more important than the fixing of a date of meeting and since the fixing of a date of meeting deserves a specific reference, the matter of the proposal to appoint a chairman also deserves a specific mention.* The fixing of a date for holding the AGM is a ruse intended to disarm the plaintiffs of their vigilance against the intention of the said defendants to appoint the fifth defendant as chairman and therefore to wrest control of the companies.

The notice of meeting was therefore invalid. Consequently, the appointment of the 5th defendant as the chairman and the removal of the first plaintiff as managing director, which are acts that flow from such invalid notice are themselves invalid as well (see *Aik Ming*'s case).

[43] It is important to emphasise that in the present case, there is no complaint of non-service or that article 86 of the Constitution had not been complied with. The only issue here is with regard to the contents of the notice or the agenda. Thus, cases where notice of the meeting was not served or where the director was excluded from the meeting are all quite irrelevant to the issue at hand. On the issue of whether a notice of meeting of the BOD or the agenda for the meeting should state the exact nature of the matters to be discussed and deliberated upon, my view is that that the true legal position is that as propounded by Lindley LJ in *La Compagnie*.

[44] Of course, as Lindley LJ himself had observed, in many instances, the notice of meeting will, as a matter of good business practice, or I might add, even as a matter of common sense and transparency, state the particular business with a considerable degree of details and content. But the omission to do so could well be justified for a variety of strategic or other reasons. And of

course, in certain instances, the omission to state the exact topic to be discussed may be deliberate or even sinister. But the ultimate legal question is whether a meeting of the board of directors is vitiated by reason of the omission to state the exact topic to be discussed.

[45] Thus, the issue is whether as a matter of company law or the law of meetings, a notice to convene a meeting of directors which is totally devoid of particulars of the specific business or transactions or matters to be discussed or decided upon is vitiated in limine based on the obiter pronouncement by the Court of Appeal in *Aik Ming*'s case. For my part, I am unable to agree with the obiter dicta that was so trenchantly articulated by the Court of Appeal in *Aik Ming*'s case.

[46] I note that Justice Gopal Sri Ram in *Aik Ming*'s case had observed (p 806) that the case of *Young v Ladies' Imperial Club, Ltd* [1920] 2 KB 523; [1920] All ER Rep 223 (CA) ('*Young*'s case') was not brought to the attention of Plowman J in *Bentley-Stevens v Jones and others* [1974] 2 All ER 653; [1974] 1 WLR 638 and Zakaria Yatim J in *Dr Mahesan*'s case. He thought that the outcome might have been different if *Young*'s case was drawn to the attention of the court in both cases.

[47] In view of the importance that was placed by the Court of Appeal on *Young*'s case, it is necessary that the case be examined closely. In *Young*'s case, the plaintiff was expelled from a ladies' club. The plaintiff sought to impugn the decision of the executive committee of the club which resolved to expel her.

[48] In that case, the plaintiff succeeded in striking down a decision of the executive committee of the club which was taken in breach of rule 42 of the rules of the club which provides that, '... no member can be so suspended or recommended to resign unless a resolution to that effect shall have been passed by a majority of at least two-thirds of the members of the committee actually present at a meeting specially convened for that purposes'. In that case, the notice was sent to all members of the committee, except the Duchess of Abercorn, who had earlier intimated that she did not wish to be troubled. Hence, the notice was not sent to her as it was thought that she would not have attended anyway.

[49] However, the Court of Appeal opined that the rules of the club should be strictly followed. Lord Warrington (p 532) said:

> ... It seems to me of great importance that rules which have been made for the purpose of regulating the proceedings of the committee in respect of such a matter ought to be strictly adhered to.

[50] It is clear that the failure to send the notice to the Duchess of Abercorn was central to the outcome in that case. In this regard, it may be noted that at p 534, Lord Warrington described the omission to summon the Duchess of Abercorn as 'the more important defect in the proceedings'. In the same page, Lord Warrington held that:

> If, therefore, the default in summoning the Duchess of Abercorn was not justified, then the meeting of the committee was not a good meeting for the purpose of transacting any business at all on behalf of the club.

[51] It is also material to note that the notice for the meeting in *Young*'s case reads as 'To report on and discuss the matters concerning Mrs Young and Mrs Lawrence'. There was no reference to rule 42 and no reference to any possibility of a request to a member to resign or the expulsion of a member. On the question of whether the notice should have alluded to rule 42 or the possibility of expulsion, Lord Sterndale MR said (p 531):

> I quite agree with what has been said to the effect that one ought not to examine this agenda and these notices of meetings too particularly and too meticulously; if in substance they convey to the members of the committee what is going to be done, that is sufficient, although one might have thought it might have been better done. My inclination is to say that this is not sufficient, but I do not think it is necessary to decide it, because the meeting was in my opinion incapable of acting on the other ground which I have stated.
>
> But I have no doubt of this, that the defendants would be well advised in summoning meetings of this kind to make their notices more particular, and to give better notice to the members summoned of the kind of business that is going to be transacted. I can see no difficulty in framing such a notice without hurting anybody's feelings.
>
> It was said that the putting of the words 'expulsion or suspension' upon the notices might be objectionable; I do not give an opinion upon that.

[52] Lord Warrington LJ dealt with the issue of business to be transacted being mentioned in the notice, in the following manner at p 533:

> There is a second point which deals with the business which it was intended to transact at the meeting. It is to be observed that the rule provides that the meeting shall be specially convened for the purpose. The purpose is to consider the question whether or not a member shall be suspended or recommended to resign. The only notice that was given in the present case on the agenda was that the meeting was to report on an discuss the matters concerning the present plaintiff and the other lady as to whom the trouble had arisen. I will deal with that point first. To my mind that notice was not a sufficient notice. The meeting convened in accordance with it was not 'a meeting specially convened' for the purpose of considering the particular thing-namely, whether or not Mrs Young should be recommended to resign.

[53] In my view, the meeting that was convened in *Young*'s case was a specific meeting which was regulated by the rules of the club, the aim of which was to seek the resignation or expulsion of a member. Indeed, the meeting under that note may well be described as a 'rule 42 meeting'. As such, it was relevant, desirable and imperative that the notice for the meeting should first, allude to rule 42, and secondly state what exactly is the specific purpose of the meeting, so that those receiving the notice will know that it is a rule 42 meeting which requires their attendance as grave consequences will follow if a decision is made by two-thirds of those present at the meeting. That is a far cry from the business that is ordinarily to be transacted at a BOD meeting of a limited company or a public listed company, where matters may be transacted by the BOD on items that are generally or specifically stated in the notice or agenda.

[54] In *Bentley-Stevens v Jones and others* [1974] 2 All ER 653; [1974] 1 WLR 638 the plaintiff's complaint was that he *had not received a letter which called for a directors' meeting* to be convened for the purposes of calling an extraordinary general meeting ('EGM') to remove the plaintiff as a director. The directors' meeting was held and the EGM was also held and the plaintiff was removed as a director.

[55] He sought an injunction to restrain the defendants from acting on the resolutions. Justice Plowman applied the dictum of Lindley LJ in *Browne v La Trinidad* (1887) 37 Ch D 1 at p 17 and declined to grant an injunction in respect of the irregularities which could be cured by going through the proper process. Plowman J said, if, for example, the proceedings that followed the board meeting of 28 January were invalid because proper notice had not been given, the invalidity could be cured by the giving of a valid notice. For completeness, I should highlight that in *Browne v La Trinidad* (1887) 37 Ch D 1 (at p 17) Lindley LJ said:

> I think it is most important that the Court should hold fast to the rule upon which it has always acted, not to interfere for the purpose of forcing companies to conduct their business according to the strictest rules, where the irregularity complained of can be set right at any moment.

[56] Having examined the relevant case law on this topic, I am impelled to the view that the salutary principle of law is that as firmly established in *La Compagnie*'s case. In this regard, it is relevant to mention that in his book *Corporate Powers Accountability* (3rd Ed, 2018) the learned author, Loh Siew Cheang opined at paras 22–45 that:

> *Disclosure of business in notice*
>
> Unlike shareholders' meetings where it is necessary to give notice not only of the meeting but also of the business to be transacted at the meeting, *it is not the law that the notice of a directors' meeting must also state the business to be transacted* at the

meeting though it will be prudent to do so. (Emphasis added.)

[57] Continuing at paras 22–47, the author cautioned that:

> The decision in *La Compagnie De Mayville v Whitley should not be pressed too far*. Much as it is the duty of directors to attend meetings whenever summoned, this principle should be applied sensibly in the context of facts and circumstances. Otherwise, *it may encourage bad corporate practice where 'ambushed meetings' become a common feature of corporate life*. (Emphasis added.)

[58] I should emphasise that the position that I take in the present matter is a purely principled approach to the question whether a notice of directors meeting must mandatorily contain the specific particulars of the matters that are to be discussed and deliberated upon. The conclusion that I have reached is that as a matter of company law or the law of meetings, there is clearly no such requirement. Of course, as a matter of prudent business practice, corporate transparency and I might add, quite possibly as a matter of fairness to the targeted individual, the notice or the agenda ought to give the recipients/attendees of the board meeting, a 'heads-up' of what to expect at the meeting so that the relevant party or parties can equip or apprise themselves with sufficient information so as to address the issues that are likely to or will arise at the board meeting.

[59] But these ideal or best practices or equitable considerations do not in any way derogate from or denude the salutary principle that a notice of board of directors meeting or agenda which states precious little about the matters that are to be discussed is not ipso facto invalid or null and void, as seems to have been declared in *Aik Ming*'s case.

[60] In so far as reliance on *Pulbrook*'s case is concerned, it is important to emphasise that the principle that was established in that case is not applicable to the present case, as that case had everything to do with *exclusion of a director* at a meeting of the board of directors. The present case before me is not a case of exclusion of a director at a meeting of the board of directors.

[61] It is important also to note that the cases which followed *Aik Ming* have mostly to do with failure to send the notice of a board meeting to a director. In the case of *Lee Nyuk Heng* the board meeting was impugned because the notice did not state that the fifth defendant was to be approved as chairman of the AGM. But that is a decision of the High Court and does not bind this court which is a court of co-ordinate jurisdiction. At any rate, I am of the view that the decision of the High Court in *Lee Nyuk Heng* does not accord or resonate with the correct legal position which is to be found in the seminal statement by Lindley LJ in *La Compagnie*.

[62] Finally, I find that *Young*'s case relates to a specific meeting of a club (and not a company) wherein it was necessary, by virtue of the particular club rule, that notice ought to have been sent to all committee members and for the notice to state clearly that it was a rule 42 meeting with sufficient details of the subject matter of the meeting. Here, there is nothing in the Constitution which is remotely similar or analogous to rule 42. I should add that the correct position of law is to be found in the decision by Zakaria Yatim in *Dr Mahesan*'s case which followed *La Compagnie*'s case.

OUTCOME

[63] For the reasons as discussed above, I am of the view that the notice and agenda are valid and it follows consequently that the board meeting and the resolutions passed thereat are valid and proper from the perspective of company law and the law of meetings. I should also add that the reliefs which are sought on behalf of Indraa are legally untenable and are a manifestation of an abuse of process.

[64] Next, it is clear that the civil courts have no jurisdiction to grant specific performance of a contract for personal services or a contract of employment. Further, the civil courts have no jurisdiction to grant declarations the effect of which is to restore or reinstate a dismissed employee. Hence, the plaintiff may not approach the civil court for an order of reinstatement as that remedy is solely within the jurisdiction of the Industrial Court per s 20 of the Industrial Relations Act 1967.

[65] I therefore granted order in terms of encl 10 and consequently ordered that the writ/statement of claim dated 17 August, 2018 be struck out and dismissed. The plaintiff was ordered to pay costs of RM5,000 (*subject to 4% allocatur*).

[66] For completeness, I think it is necessary to add that the question of whether the plaintiff was dismissed with or without just cause or excuse, is very much a live issue before the Industrial Court. Thus, the striking out order herein in no way affects the plaintiff's right to challenge the termination of her contract of employment or her dismissal as the MD of the first defendant. It goes without saying that the plaintiff is fully entitled to challenge her dismissal in Industrial Court Case No 7–4–2875–18 on all grounds relevant to industrial jurisprudence.

Order accordingly.

A *Order in terms of encl 10 granted; and writ/statement of claim struck out and dismissed.*

Reported by Nabilah Syahida Abdullah Salleh

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